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DOD 1402.3-H

Chapter 10



## OFFICE OF THE SECRETARY OF DEFENSE

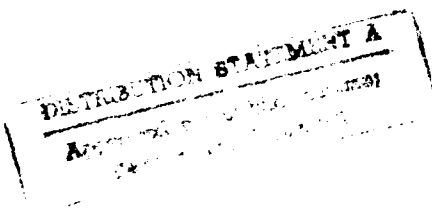
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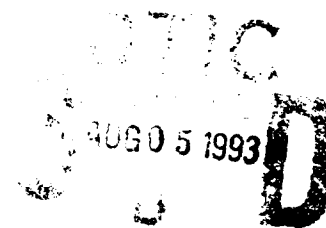
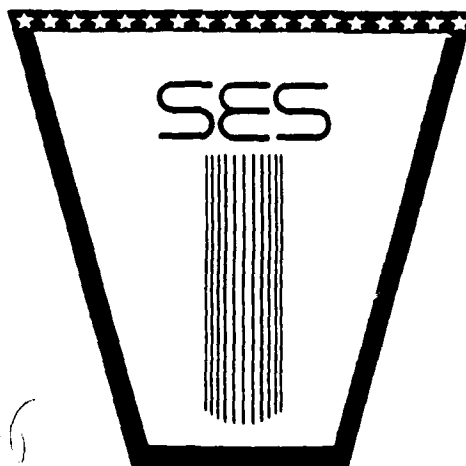
# SENIOR EXECUTIVE SERVICE

## Leave and Related Issues

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Office of the Secretary of Defense, OSD Field Activities,  
Organization of the Joint Chiefs of Staff, the U.S. Court of  
Military Appeals, the U.S. Mission to NATO, and the Defense Agencies

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SENIOR EXECUTIVE SERVICE  
LEAVE AND RELATED ISSUES

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Senior Executive Service Handbook

Chapter 10



COMPTROLLER

(Administration)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

DoD 1402.3-H  
Chapter 10

FOREWORD

The Senior Executive Service Handbook is issued under the authority of DoD Directive 1402.3, "Administration of the Senior Executive Service Program in the Office of the Secretary of Defense and the Defense Agencies," August 16, 1984.

The purpose of this chapter is to provide guidance to members of the Senior Executive Service (SES) and to their supervisors concerning the accumulation of unlimited annual leave and related issues.

This chapter applies to the Office of the Secretary of Defense (OSD), DoD field activities, the Organization of the Joint Chiefs of Staff (OJCS), the Defense Agencies (except the National Security Agency/Central Security Service and the Defense Intelligence Agency), the Office of the Inspector General (OIG), the U.S. Court of Military Appeals (USCOMA), and the U.S. Mission to the North Atlantic Treaty Organization (NATO).

This chapter is effective immediately, and its use is mandatory.

Send recommended changes through channels to the following:

SES and Classification Division  
Directorate for Personnel and Security  
Washington Headquarters Services  
Room 38347, The Pentagon  
Washington, D.C. 20301-1155

Copies may be obtained from OSD Publications, Room 38960, The Pentagon.

D. O. Cooke  
Deputy Assistant Secretary of Defense

REFERENCES

- (a) Title 5, United States Code, Section 6304(f)
- (b) Title 5, Code of Federal Regulations, Section 630.301(a)
- (c) Title 5, Code of Federal Regulations, Section 630.306
- (d) Title 5, Code of Federal Regulations, Section 630.301(c)
- (e) Title 5, United States Code, Section 6304(a)
- (f) Title 5, United States Code, Section 6304(b)
- (g) Title 5, United States Code, Section 5595 (Title 5, Code of Federal Regulations, Section 550.701(b)(8))
- (h) Title 5, United States Code, Section 3392(c)
- (i) Comptroller General Decision B-77963, April 14, 1961;  
40 Comp. Gen. 579
- (j) Title 5, United States Code, Section 5541
- (k) Title 5, United States Code, Section 5550(a)
- (l) Title 5, United States Code, Section 5545(d)

## A. INTRODUCTION

Members of the SES are subject to the same leave policies as other employees, except that they may accumulate annual leave without limit. This handbook provides procedural guidance for unlimited accumulation of annual leave by SES members and for the establishment of personal leave ceilings upon their separation from the SES, as well as a discussion of related leave/pay issues.

## B. DEFINITIONS

1. Presidential Appointee. An individual appointed by the President to a civilian position in the Executive branch with the advice and consent of the Senate at a rate of basic pay which is equal to or greater than the rate payable for Executive Level V. For purposes of this handbook, Recess Appointments, which are a constitutionally sanctioned means of filling positions otherwise requiring Senate confirmation when the Senate is not in session, are included in this definition.

2. Premium Pay. Additional pay for overtime, night, Sunday, and holiday work, and standby duty.

3. Hazard Pay. Payment of differentials for irregular or intermittent duty involving unusual physical hardship or hazard to employees.

4. Compensatory Time. Time off (hour-for-hour) granted an employee in lieu of overtime pay.

## C. LEGAL PROVISIONS

Title 5, United States Code, Section 6304(f) (reference (a)) provides that there will not be a maximum limitation on annual leave accumulated "... while serving in a position in the SES." Consistent with this statutory provision, 5 CFR 630.301(a) (reference (b)) provides that the limitation on accumulation of annual leave typical of most Civil Service positions will not apply to leave accrued by an individual while serving in the SES. Thus, only the annual leave which accrues while serving in the SES is protected from forfeiture. Annual leave in excess of the employee's maximum accumulation level which accrues prior to the employee's entry into the SES, and which has not been used by the beginning of the leave year immediately following entry into the SES, is subject to forfeiture and possible restoration (under certain conditions). Entry into the SES does not change the time limit established under 5 CFR 630.306 (reference (c)) during which restored leave must be used in order to avoid forfeiture. The annual leave which is not subject to forfeiture and the annual leave which accrues while serving in the SES are carried forward into subsequent years without limitation or forfeiture as long as the employee remains in the SES.

#### D. PRO RATA CREDITING

Annual leave accrued is prorated during a pay period when an employee serves only a portion of the pay period in the SES. In other words, if an employee is appointed in, converted to, or separated from the SES without a break in service at other than the beginning or end of a pay period, the leave accrued during the part of the pay period before or after the personnel action shall be credited to the employee's regular annual leave account or SES annual leave account on a pro rata basis.

#### E. UPON LEAVING SES

Annual leave which accrues after the employee leaves the SES is subject, at the beginning of each leave year following service in the SES, to the personal leave ceiling established under the provisions of 5 CFR 630.301(c) (reference (d)). The established ceiling will be equal to the accrued and accumulated annual leave to the employee's credit at the time of separation from the SES (excluding any restored annual leave, and any unused annual leave which was accrued prior to entry into the SES and was in excess of the employee's authorized maximum accumulation level at the time of entry into the SES). The personal leave ceiling will be not less than 30 days or 45 days, as appropriate, under 5 U.S.C. 6304(a) (reference (e)) or 5 U.S.C. 6304(b) (reference (f)). The personal leave ceiling will be reduced at the beginning of the first full pay period in each leave year by the amount of annual leave used during the preceding year which is in excess of the leave accrued during that year until the accumulated level equals 30 days, or 45 days, as appropriate. (Generally speaking, only those employees who have completed overseas tours of duty are authorized personal leave ceilings of 45 days. See reference (f) for related conditions.)

#### F. UPON SEPARATION FROM FEDERAL SERVICE

Upon separation from the Federal service, the employee is entitled to receive a lump-sum payment for all the unused annual leave to his or her credit, including leave in excess of his or her leave ceiling and restored leave. Although severance pay provisions, when applicable, cover career SES members, noncareer SES members are excluded from coverage by 5 U.S.C. 5595 and 5 CFR 550.701(b)(8) (reference (g)).

#### G. PRESIDENTIAL APPOINTEES

As a rule Presidential appointees do not accrue leave. However, a Presidential appointee who is converted from an SES career appointment and elects to retain leave benefits under 5 U.S.C. 3392(c) (reference (h)) is an exception to the general rule and accrues leave in the same manner and amount as in the prior SES appointment. For an SES member who converts to a Presidential appointment, leave already accrued is held on account until such time as the appointee returns to the SES or leaves Federal employment, in accordance with Comptroller General Decision B-77963 (reference (i)). In the event that the appointee returns to the SES, leave is simply recredited to his/her account. Should the employee leave Federal service altogether, he/she will receive a lump-sum payment for annual leave, and sick leave will be added to years of service for retirement/annuity calculation purposes, if

applicable. Reimbursement for annual leave is made at the hourly rate of pay of the former SES position, not at the Presidential appointee rate.

#### H. PREMIUM PAY

Title 5 U.S.C. 5541(2)(C)(xvi) (reference (j)) specifically excludes SES members from premium pay provisions, i.e., paid overtime and compensatory time (other than for religious observances).

#### I. COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

In accordance with 5 U.S.C. 5550(a) (reference (k)), any employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who elects such overtime work shall be granted equal compensatory time off from his/her scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law. However, 5 U.S.C. 5545(d) (reference (l)) also provides that an employee's election to work compensatory overtime or to take compensatory time off to meet religious obligations may be disapproved by an agency, if such modifications in work schedules interfere with the efficient accomplishment of an agency's mission. Therefore, although SES members are excluded from general premium pay provisions, they are authorized compensatory time off for religious observances.

#### J. HAZARD PAY DIFFERENTIAL

Since reference (1) applies only to General Schedule employees, hazard pay differentials are not authorized for members of the SES.